IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1225 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C N PANICKER AND ANOTHER

Versus

DIRECTOR OF TECH. EDUCATION AND ANOTHER

Appearance:

MR BP TANNA for Petitioner No. 1-2

MR NC THAKKAR, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 06/07/2001

ORAL JUDGEMENT

When this petition was taken up for hearing on 22nd June, 2001, the Court (Coram : K.R.Vyas, J) passed the following order :

" The petitioners in this petition, over and above other reliefs, have prayed

to direct the respondent nos.1 and 2 to release the amount of increments withheld till the final hearing of this petition and to direct them not to withhold any of the increments of the petitioners thereafter for the reason of not passing of Gujarati language examination. On 10.3.1998, Rule was issued in the matter to be heard with SCA No. 2266 of 1979 and notice as to interim relief was issued on 6.4.1988. The Division Bench granted interim relief as prayed for in para 26(E) on condition that (i) the petitioners shall appear at every Gujarati language examination held during the pendency of this litigation; (ii) that the petitioners will restore the amount of increments in salary within three months from the date of order of the High Court in case the petitioners fail in this petition; and (iii) the petitioners shall file undertaking in this connection within one week from the said date.

Since the petition is not heard for all these years, today when the matter is called out for hearing, the Court wanted to know as to whether the petitioners appeared in Gujarati language examination held during the pendency of the petition. The learned Counsel for the petitioners has no instructions to the said query. In the circumstances, to enable the learned Counsel for the petitioners to take appropriate instructions in the matter, adjourned to 29.6.2001. Office shall list the papers of Special Civil Application No.2266 of 1979 on the said date of hearing."

2. It appears that as directed by the Court while granting interim relief, the petitioner had filed an undertaking on 13th April, 1988. In pursuance of such undertaking filed by the petitioner, the increments due to the petitioners were paid by the respondent.

3. To-day, when the matter was called out Mr.N.C.Thakkar, Ld. A.G.P., appearing on behalf of the respondent produced a letter dated 28th June, 2001, whereby he has received instructions to the effect that

both the petitioners have passed Gujarati language examination in June 1992 and July 1990 respectively.

4. It is further submitted that both the petitioners have respectively retired on 1st March, 1995 and 31st May, 1995. The said letter is taken on record.

5. By paragraph 26(A), the petitioners have claimed following relief :

> (A) to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent No.1 and 2 to release the amount of increments withheld from 1-6-1987 and 1-6-84 respectively till the final hearing of this petition and direct them not to withhold any of the increments of the petitioners thereafter for the reasons of not passing Gujarati Language examinations.

6. In view of the fact that during the pendency of the petition, the amount of increments withheld have already been paid to the petitioners and the petitioners have already appeared and passed the Gujarati language examination, no grievance survives so far as the petitioners are concerned. The petition is accordingly disposed of.

7. It appears that there is some apprehension so far as the petitioners are concerned, that the increments paid during the pendency of the petition may be sought to be recovered from them. We may make it clear that the increments which were withheld on account of non-passing of Gujarati language examination cannot be now recovered in view of the fact that the petitioners have already cleared Gujarati language examination.

8. In view of this factual position, without entering into merits of the controversy, it would be in the interest of justice, if no recovery is raised against the petitioners.

9. The petition is allowed accordingly to the aforesaid extent. Rule is made absolute with no order as to costs.

(D.A.Mehta, J)

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'Bhavesh'
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